IN THE COURT OF HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 773 (M/B) 2003

1. Dushyant Kumar S/o Bishamber Das,
2. Poonam Devi w/o Dushyant Kumar
both residents of village Subhash Nagar,
Post Jwalapur, Distt. Haridwar…….. Petitioners

Vs.

District Magistrate Haridwar,
and Others…….. Respondents

Mr. L.P.Naithani i/b Mr. J.P. Joshi, Advocate for the petitioners,
Mr. N. B. Tiwari, learned C.S.C. for the respondent nos. 1 and 2
Mr. Vivek Shukla, Advocate for the respondent no.3.

…….

Coram:Hon. S. H. Kapadia, C.J.
Hon. Rajesh Tandon, J.

Date: 26.8.2003.

ORAL JUDGMENT[Per Hon. S.H.Kapadia,C.J.]

Rule.

Respondents waive service.

Panchayat elections were held in district Haridwar, which was in the State of U.P. in May, 2000.

The Elections were held in accordance with the constitutional amendment as incorporated by Part IX in the Constitution. The respondent no.3 contested the election of Pradhan in women quota. She was elected. The Strength of members was 13, out of which respondent no.3 was elected as Pradhan.

Suffice it to state that allegation of financial irregularities was made against the respondent no.3 and the District Magistrate constituted three member committee in accordance with law taking away financial and administrative powers from the respondent no.3 and vesting those powers in the three member committed. This was around 14.2.2003. Thereafter, an inquiry was also made by the District Panchayat Raj Officer, who has submitted the report to respondent no.1. It appears that the District Magistrate has now by the impugned order dated 11.8.2003 restored the financial and administrative powers back to the respondent no.3 without disclosing the inquiry reports, merely on the ground that the respondent no.3 has repaid the defalcated amount.

In the case of Regional Manager, U.P.S.R.T.C., Etawah and others Vs. Hoti Lal and another reported in (2003)3 Supreme Court cases 605, it has been held that if a charged person holds position of trust, it would not be proper to exonerate such a person merely because he returns the public money or reverses the financial transactions on a later date when the misconduct is detected. Our observations above are tentative in nature because we do not have before us the copies of the inquiry reports. However, by reason of the impugned order, the District Magistrate has restored the financial and administrative powers with the respondent no.3 and thereby the powers which were given to three member committee have been once again restored to the third respondent without the petitioner being supplied with the copy of the inquiry report. Even the respondent no.3 has not received copy of the inquiry report. Therefore, we are passing following directions in the mater:

ORDER

(A) The respondent no.1, the District Magistrate, Haridwar is hereby directed to furnish copies of the inquiry reports submitted to him, to the petitioner and the respondent no.3 within three weeks from today.

(B) The order of the District Magistrate, Haridwar dated 11.8.2003 is hereby set aside.

(C) The three member committee will be vested with the financial and administrative powers once again under section 95(g) read with proviso to the U.P. Panchayat Raj Act, 1947 and the three member committee will continue to discharge those functions pending disclosure of the inquiry report.

(D) Liberty is given to the petitioner to move this Court within a period of eight weeks from today of the receipt of inquiry report and seek proper relief in case, the report is adverse to the interest of the Gaon Panchayat.

(E) Liberty is also given to the respondent no.3 to move this Court, if inquiry report is adverse to her within a period of eight weeks of time. Till such time three member committee will continue to operate.

The petition is disposed of. No order as to costs.

(Rajesh Tandon, J.) **(S.H.Kapadia, C.J.)**

AK: